

Remarks

This is in response to the first Office Action mailed June 14, 2005. The Applicant has hereinabove amended the claims including the cancellation without prejudice of claims 14 and 21, the modification of claims 1, 4, 9, 10, 13, 15, 17 and 19, and the addition of new claims 22 and 23.

Independent claim 1 has been generally amended to additionally feature "a flexible member affixed to the interior surface of the panel to form a closed sleeve or pouch to contactingly support the medial portion of the article on a side opposite the inner surface of the panel." This recited member is exemplified in FIG. 4 at 128 (backing layer) and FIGS. 5-7 at 132 (headband); see also specification, page 5, line 24 to page 6, line 12, and the language of originally filed claims 9 and 13.

In this way, independent claim 1 has been generally amended to cover both of the respective embodiments of FIG. 4 and FIGS. 5-7, each of which show an interior flexible member disposed between the medial portion of the aperture and the wearer's head. As discussed below, this feature is not believed to be disclosed, taught or suggested in the art in combination with the other subject matter set forth by of claim 1.

Independent claim 15 has been similarly amended. The amendments to the dependent claims either correct minor errors in the claims as originally filed, or serve to better conform the language thereof to independent claims 1 and 15.

New dependent claim 22 depends from claim 15 and generally features the flexible member as comprising canvas or semi-elastic fabric. Support for this is found including in the specification at page 5, lines 27-29.

New independent claim 23 generally sets forth subject matter from allowable claim

10. Support is thus found including by the language of originally filed dependent claim 10.

These amendments are believed to be proper, do not introduce new matter, define subject matter that is patentable over the art of record, and place the application in proper condition for reconsideration and allowance.

Rejection of Claims Under 35 U.S.C. §102

Claims 9 and 11-20 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Published Patent Application No. US2004/0210982A1 to Kronenbeger ("Kronenbeger"). Claims 15 and 21 were additionally rejected under §102(b) as being anticipated by U.S. Patent No. 5,734,993 to D'Oca ("D'Oca").

The Applicant appreciates the detailed reasoning set forth in the Office Action but nevertheless respectfully traverses the above rejections in view of the amendments presented above.

With respect to the rejection of originally filed claim 9, the Examiner posited that, because Kronenbeger discloses portion 24 and discloses the apertures 42, 44 can be located in any suitable location, it inherently follows that the article would be inserted so as to lie between the crown 12 and the portion 24.

In response, the Applicant respectfully points out that in order for a reference to be found to inherently anticipate a claim, each of the limitations must be *necessarily* present in the prior art reference. In the present case, Kronenbeger describes the portion 24 as forming a portion of the internal surface 20 of the crown 12, and the apertures extending through the full thickness of the crown 12. See paragraphs 0045 and 0048. Thus, it is at

least as likely that if Kronenbeger were to place the slits 42, 44 in the vicinity of the portion 24, then the slits would extend through portion 24 as well. Accordingly, newly amended claims 1 and 15 define subject matter that is not inherently anticipated by Kronenbeger.

Moreover, interposing a protective layer of material between the article, such as the backing layer 128 or the headband 132 in the present application, serves to advantageously protect the head of the wearer from the pointy distal end during insertion, which is a problem not even contemplated by Kronenbeger. It is significant that Kronenbeger never recognizes the advantages that could be achieved by inserting the article either between the crown 12 and the portion 24 or by applying a separate backing layer. It is further significant that Kronenberger treats the portion 24 as forming a portion of the interior surface 20 of the crown 12, and thus does not recognize that a gap might in fact exist therebetween that could be used as claimed in the present case.

Accordingly, the Applicant respectfully submits that the subject matter of the present application is further nonobvious over Kronenbeger, alone or in combination with other art of record.

With regard to D'Oca, the Applicant respectfully submits that this reference is likewise silent with regard to the subject matter of amended claims 1 and 15. Accordingly, the Applicant respectfully submits that the claims of the present application are likewise patentably distinct over this reference as well.

Allowable Subject Matter

The Applicant gratefully acknowledges the indication of allowability of originally filed claim 10. This allowable subject matter has generally been set forth by newly added independent claim 23.

Conclusion

The Applicant respectfully requests reconsideration and allowance of all the pending claims in the application. This is intended to be a complete response to the Office Action mailed June 14, 2005.

Should any questions arise concerning this response, the Examiner is invited to contact the below signed Attorney.

Respectfully submitted,

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